

2013 SENATE INDUSTRY, BUSINESS, AND LABOR

SB 2220

2013 SENATE STANDING COMMITTEE MINUTES

Senate Industry, Business and Labor Committee
Roosevelt Park Room, State Capitol

SB 2220
January 28, 2013
Job Number 17810

Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to public private partnerships

Minutes:

Testimony Attached

Senator Wardner: Said this is a bill about changing some things in the Public Private Partnerships laws in North Dakota. It is before them because of a project going on in Stanley, North Dakota where they have a public private partnership for a city hall. They could do it but it pushes the envelope. Congressman Earl Pomeroy is the one that contacted him for his law firm, and has been involved in this type of thing, there needs to be some things done to make it easier. (:38 - 6:34) He brought a letter from Tim Dawson summarizing the bill (1).

Senator Laffen: Said that under this method cities would no longer have to ask for a vote from their citizens to do projects, do they still have to follow all the other laws we have in terms of selection of designers, public bidding?

Senator Wardner: Said the second question first, yes that doesn't change anything. On the first part it does open it up, however the people that are elected are responsible to the people and if they do something the people don't like they can vote them out. Said that right now Williston needs schools and this could be used there, if the school board chose to use this.

Chairman Klein: Said that in that case the people have already rejected the bond issue and this would circumvent their voice.

Senator Laffen: Asked if there is a safeguard for the bonding issue, in this case you would just sign a lease; there is no bond indebtedness then?

Senator Wardner: Said there is a lease to be signed and then at some point and time the facility needs to be turned over to the political sub. It might be a twenty or thirty year lease.

Discussion and questions continued on what would happen if this goes through and problems that could occur. (10:30 - 23:55)

Tim Dawson, Legislative Council: Said he is not here for or against, just to answer questions.

Chairman Klein: Said if the city comes into agreement with this private group, everyone should know at the end of the day if they don't make their payments what's going to happen, can you add to that?

Tim: Said that this offers a very broad degree of flexibility that needs to be put into the contract. The political subdivision will need to address these things in the contract or the agreement with the developer. There isn't anything in the bill that says too much as to what they have to do, except for this comparison of financing.

Senator Laffen: Said that there are a lot of good rules in law to prevent the abuse of building public facilities and in an essence this just says those are all gone.

Tim: Said it provides a lot of flexibility and gets rid of the rules. What you are saying is fair although, it could be characterized differently.

Comments and questions continued about safeguards and bond issues (26:21 - 32:28)

In Opposition

Bonnie Staiger; American Institute of Architects: Said she would like them to resist amending this bill and to give it a do not pass. It circumvents the bidding process which is the only public protection that taxpayers have in choosing the best possible means to procure a project. The other thing that is troubling is that the vote of the people could also be circumvented. She gave an example. (34:20 - 35:12)

Mark Dougherty: Said he is here a citizen of the State. He said that there a lot of things going around trying to reduce property tax and this bill end-runs by giving other political subdivisions away to end-run the taxpayer and do what they want on a lot of different projects.

Chairman Klein: Closed the hearing.

Discussion and comments about the concerns of this bill (36:56 - 43:21)

2013 SENATE STANDING COMMITTEE MINUTES

Senate Industry, Business and Labor Committee
Roosevelt Park Room, State Capitol

SB 2220
January 29, 2013
Job Number 17917

Conference Committee

Committee Clerk Signature

Explanation or reason for introduction of bill/resolution:

Relating to public private partnerships

Minutes:

Discussion

Chairman Klein: Asked Senator Sinner for comments on 2220.

Senator Sinner: Said that he has had conversations with people about this bill and he is not comfortable with the way it might work out. There are a lot of open ends on this and if the committee is ready he would motion for a do not pass.

Chairman Klein: Said that Senator Laffen's question on this made him think twice about this because they are circumventing the entire system and he would like his comments.

Senator Laffen: Said he agrees with Senator Sinner, there are a lot of issues. He went back and did some homework on the project in Stanley. He discussed the project in Stanley (2:05 - 5:36)

Discussion continued and it was decided to hold off on the motion.

2013 SENATE STANDING COMMITTEE MINUTES

Senate Industry, Business and Labor Committee
Roosevelt Park Room, State Capitol

SB 2220
January 30, 2012
Job Number 18008

Conference Committee

Committee Clerk Signature

Explanation or reason for introduction of bill/resolution:

Relating to public private partnerships

Minutes:

Discussion and Vote

Chairman Klein: Opened the meeting for discussion. He said he sensed a lot of concerns and some had made great points. This is complicated and he understands that it is putting the community at risk and putting their bond rating at risk.

Senator Andrist: Said he mostly likes the bill and would like to put a voting requirement on it.

Chairman Klein: Said by adding the voting requirement does that really provide opportunity for this to really work in the fashion it would.

Senator Andrist: Said that the scenario that Senator Laffen laid out is a probable scenario for a large project of some kind but didn't think the law would restrict it to that kind of scenario. He could see in a small community that a group of investors might build it.

Discussion (2:20 - 4:48)

Senator Unruh moved for a do not pass.

Senator Laffen seconded the motion.

Roll Call Vote: Yes - 6 No - 1 Absent: 0

Floor Assignment: Senator Laffen

**2013 SENATE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 2220**

Senate Industry, Business, and Labor Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment
 Rerefer to Appropriations Reconsider

Motion Made By Senator Unruh Seconded By Senator Laffen

Senators	Yes	No	Senator	Yes	No
Chariman Klein	x		Senator Murphy	x	
Vice Chairman Laffen	x		Senator Sinner	x	
Senator Andrist	x				
Senator Sorvaag	x				
Senator Unruh	x				

Total (Yes) 6 No 1

Absent 0

Floor Assignment Senator Laffen

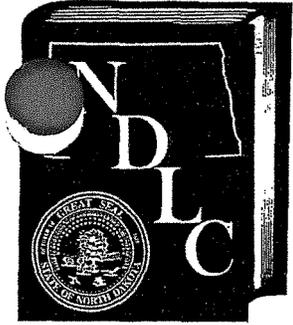
If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2220: Industry, Business and Labor Committee (Sen. Klein, Chairman) recommends **DO NOT PASS** (6 YEAS, 1 NAYS, 0 ABSENT AND NOT VOTING). SB 2220 was placed on the Eleventh order on the calendar.

2013 TESTIMONY

SB 2220



North Dakota Legislative Council

STATE CAPITOL, 600 EAST BOULEVARD, BISMARCK, ND 58505-0360

Jim W. Smith
Director

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Division Director

Allen H. Knudson
Legislative Budget
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Jason J. Steckler
Administrative Services
Division Director

John Walstad
Code Revisor

January 25, 2013

Honorable Rich Wardner
State Senator
Senate Chamber

Dear Senator Wardner:

This letter is in response to your request for a summary of Senate Bill No. 2220.

This bill makes a simple change in a definition to expand public-private partnerships. Instead of limiting private building of facilities used by a public entity to be repaid from fees collected by that public entity for that facility, this bill allows for the building of qualifying projects. There is not a requirement of a fee-based facility.

Section 1 - Defines qualified project. A qualified project includes most public infrastructure.

Section 2 - A private operator, i.e., a developer, may build a qualifying project and may incur debt in the project for the term of the project. In short, the developer may use the building as collateral.

Section 3 - Clarifies that a private party may initiate the process and the public authority may accept the offer. The public authority must compare the offer with other forms of financing.

Section 4 - The agreement may be in any form and may include different funding sources, a combination of projects, and payments from user fees, lease payments, service payments, availability payments, or performance-based payments.

Section 5 - Allows for review and revision of leases for public facilities within the maximum length of 50 years as agreed by the parties. The law used to require review and revision every five years.

Section 6 - The private operator must follow the laws as to environmental clearance, design, and safety that would have applied to the public body if it built the project.

Section 7 - Requires certain terms in the agreement. There must be the same standards of construction, review and approval, and safety inspections as if built and ran by the public body. In addition, for fee-based facilities, the agreement must include that the fees will pay the maintenance, operation costs, and debt.

Section 8 - The agreement may impose a fee and the fee may be applied to debt; lease of fee-based concessions payments; operation, maintenance, and administration; and future capital outlays.

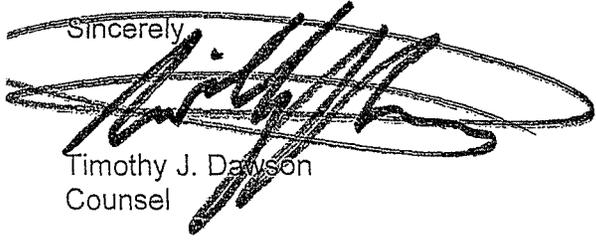
Section 9 - Allows more than one public body to be involved in a qualifying project.

Section 10 - The governing body of a city or county may waive property taxes. If the agreement addresses bidding, then public bidding law does not apply and the agreement rules.

Section 11 - Makes information from the developer exempt from public record laws if the information is a trade secret or is private financial information. Discussion by the public body of this information may be done in executive session.

Please contact this office with any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Timothy J. Dawson", is written over a large, horizontal, scribbled-out line.

Timothy J. Dawson
Counsel

TJD/SA